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ABSTRACT

The report outlines areas of policy convergence between agencies providing services to adjudicated handicapped youth and suggests policy arrangements to encourage interagency agreements necessary to carry out P.L. 94-142 (the Education for All Handicapped Children Act) and Section 504 of the Rehabilitation Act of 1973. Research is cited showing the incidence of mental retardation and learning disabilities among adjudicated youth. Policy issues are addressed in the following areas: procedural safeguards (including timely notice, nondiscriminatory evaluation, and surrogate parents); appropriate educational programing; placement in the least restrictive environment (including a review of judicial interpretation of the principle); and individualized education programs (IEPs). Trends in state interagency agreements to provide special education and related services to the population are depicted in a chart, and selected state situations are discussed. Among future issues examined are personnel needs and inservice training, funding and the provision of related services, and educational policy considerations for the handicapped offender aged 18 to 21 under P.L. 94-142. Eight policy options are presented, including suggestions for cooperation between the state education agency and the state youth correctional facility in developing IEPs. (CL)

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EDUCATION OF ADJUDICATED HANDICAPPED YOUTH:

POLICY ISSUES AND IMPLICATIONS

Cathe McCall Hockenberry
Education Specialist
The Council for Exceptional Children

Policy Options Project
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TABLE OF CONTENTS

	Page
INTRODUCTION	1
Identification of Specific Policy Issues and Establishing a Methodology	2
I. IDENTIFICATION AND EVALUATION OF THE POPULATION	5
Overview of the Population	5
Educational Policy Options for Adjudicated Handicapped Youth under the Procedural Safeguards Mandate of P.L. 94-142	8
Timely Notice and Consent of Parent or Guardian	8
Nondiscriminatory Evaluation	9
Surrogate Parents	10
II. PLACEMENT AND PROGRAM OPTIONS AND THE INDIVIDUALIZED EDUCATION PROGRAM PROVISIONS OF P.L. 94-142	13
Situating the Policy Issues	13
Appropriate Educational Programming	14
Refocusing the Concept of Least Restrictive Environment (LRE)	15
Judicial Interpretation of the Least Restrictive Environment (LRE) Mandate	18
Educational Policy Options for Handicapped Adjudicated Youth Under P.L. 94-142	22
Options Related to the Individualized Education Program (IEP)	23
Options Related to the Least Restrictive Environment (LRE)	25
III. STATE AGENCY AGREEMENTS	27
Sole State Agency Responsibility	27
State Interagency Agreements	28
Recent Trends in State Interagency Agreements Chart	29
Federal Interagency Coordination with the States	34

	Page
IV. AREAS FOR FUTURE CONSIDERATION	37
Personnel Needs and Inservice Training	37
Funding and the Provision of Related Services	38
Educational Policy Considerations for the Handicapped Offender Aged 18 to 21 under P.L. 94-142	41
CONCLUDING STATEMENTS AND POLICY OPTIONS	46
Policy Option #1	46
Policy Option #2	47
Policy Option #3	47
Policy Option #4	47
Policy Option #5	47
Policy Option #6	48
Policy Option #7	48
Policy Option #8	48
APPENDIX A	49
REFERENCES	50

INTRODUCTION

Inherent in the implementation of P.L. 94-142, the Education for All Handicapped Children Act of 1975, is the provision for a "free appropriate public education" (20 U.S.C. 1411 §612(2)(B)), to meet the unique educational needs of each handicapped child. Procedural safeguards were mandated in the Act to insure that the rights of the handicapped child and the child's parents were protected in the identification, evaluation and placement processes specified by P.L. 94-142 and P.L. 93-380 (The Education Amendments of 1974). The individualized education program (IEP) became the conduit by which special education services and any related services needed by the handicapped child to benefit from special education instruction, were provided by the school system. The degree of "appropriateness" was to be determined by the IEP, as well as the least restrictive environment (LRE) in which to provide the education. This system of educational and procedural safeguards promulgated by P.L. 94-142 is currently being instituted in school systems across the country as local and state education agencies implement special education programs and services for school children aged 5-17, as set forth in the law and in regulations.

For the handicapped student who comes under the jurisdiction and purview of the Juvenile Justice System, there exists a dual system of procedural safeguards. The educational protections of P.L. 94-142 may be suspended before, during, and, for many handicapped students, even after the adjudication hearing. The structure and formalities of the Juvenile Justice System are designed to protect the status of the juvenile during the court proceedings and to divert as many cases as possible from formal adjudication to probationary status or to residential treatment centers. Recent studies (Smith, 1978; ACLD, 1979) have shown that the nature and/or antisocial behaviors of handicapped youth make them, as a group, more vulnerable to formal adjudication than other classes of youth who commit similar delinquent or status offenses.

Handicapped youth who become delinquent, often have experienced school or academic failure (Glueck and Glueck, 1950; Burke and Simons, 1973; Murray, 1976; Toby and Toby, 1962; Clarizio and McCoy, 1970; as cited in Smith, 1978) and have also exhibited behavioral problems that have resulted in school truancy and difficult family relations. The documentation of these antisocial behaviors by the public schools and other public agencies involved with the handicapped youth often has fostered jurisdictional problems on the part of these agencies when the handicapped youth comes before the juvenile court. This jurisdictional problem may only surface when the policies and procedures of the agencies involved with the handicapped youth are not clearly delineated with respect to responsibility and lines of authority. The educational program emphasis of each public agency charged with providing services to handicapped youth will necessarily reflect the specific legislative mandate established for that agency.

Policy agreements between public agencies charged with providing services to handicapped youth who commit a delinquent or status offense, can begin to lessen jurisdictional problem areas and help to maintain the necessary special educational services. This paper outlines the areas of policy convergence between agencies providing services to adjudicated handicapped youth and offers specific policy options to help facilitate the interagency agreements necessary to carry out the mandates of P.L. 94-142 and §504 with respect to the education of handicapped children and youth.

Identification of Specific Policy Issues and Establishing a Methodology

In analyzing the basic policy issues inherent in the provision of special education and related services to adjudicated handicapped youth, the purpose of this paper is to identify specific points of convergence when the state education agency and the juvenile corrections agency have conflicting interests for the education and/or rehabilitation of handicapped youth. The problem centers

on the regulatory and statutory duties of both agencies and the imposed autonomy of these systems. Each system may provide for the health, safety, protection from harm and either education or rehabilitation of the children and youth entrusted to their care. The policy conflicts in the systems arise from different legislative mandates specifying primary duties and goals, with respect to either education or rehabilitation.

The State Education Agency (SEA) is charged with providing free public education to all the citizens of that state of school age. Recent federal laws (P.L. 94-142 and §504 of P.L. 93-112) also charge the states to provide appropriate special education and related services for all identified handicapped children of school age, at no cost to their parents or guardians (§121a.300 et.seq.). Moreover, the State Education Agency (SEA) is given sole state agency responsibility (§121a.600 et.seq.) to see that the mandates of P.L. 94-142 are carried out for all handicapped youth placed in private or other state agency run institutions.

The state correctional agency under the Juvenile Justice System is charged with operating facilities to house, detain, rehabilitate or otherwise correct the antisocial behaviors that precipitated the occurrence of an act, by a juvenile, that is considered an offense by the community or society (GAO Report # GGD-76-97, 1977). The corrections agency is not primarily charged with the education of those youths confined to its custody. Most state compulsory school attendance laws are binding on correctional facilities, as well as school systems. The problem is further compounded when a handicapped youth is placed in a correctional facility by the juvenile court. The handicapped youth, by virtue of the adjudication process, becomes a responsibility of the state, subject to the jurisdication of the judiciary system. Since the education of the adjudicated handicapped youth is still the mandated responsibility of the State Education Agency (SEA), this area of overlapping responsibilities is a key point of convergence where policy decisions are needed and necessary.

Policy agreements need to be implemented by both the school and the court at critical decision points in the transition from school environment to correctional facility. At each point of penetration into the juvenile justice system, a policy decision between school and court may be needed to protect the procedural and educational rights of the handicapped youth. The procedural safeguards mandated by P.L. 94-142 and P.L. 93-380 relative to the provision of a surrogate parent to act for the handicapped adjudicated youth in educational matters needs to be explored in light of state limited guardianship laws regulating the state's right to impose guardianship. Also, the educational safeguards mandated by the individualized education program (IEP) may be used to help provide the most appropriate "placement" within the confines of the juvenile correctional system for the handicapped offender, if policy statements are in effect between the SEA and the Department of Corrections.

The primary intent of this policy options paper is to explore, analyze and present the basic policy issues regarding the provision of appropriate special education programs for identified handicapped adjudicated youth in the form of policy option statements. Both the positive and negative aspects of each policy option statement will be explored in light of federal, state and local regulations affecting handicapped youth. A policy base will be established that will help to address the issues developed throughout this paper that impact on programs and services for handicapped adjudicated youth.

The specific methodology to be employed is an analysis of Federal and Constitution laws impacting on handicapped youth, as well as relevant court cases and judicial opinions affecting the education and placement of handicapped youth. The FY 1979 Annual Program Plans (for Special Education) for each state have been researched for appropriate data, and a literature review has been conducted to reflect current thinking in the area of handicapped adjudicated youth.

Chapter I
IDENTIFICATION AND EVALUATION OF THE POPULATION

Overview of the Population

Reports of the educational characteristics of adjudicated youth as well as more recently, the incidence of handicapping conditions, have appeared at an increasing rate over the past two decades. There exists sufficient statistical information - even if there are variances in the overall findings concerning educational attainment levels among offenders - that clearly demonstrates a need for educational and vocational programming for the offender population. According to recent statistics compiled by Meta Metrics, Inc., (1977) for HEW:

- There are approximately 250,000 inmates in U.S. corrections facilities on a more or less permanent basis. Typically, the inmate is young, male and has not completed a high school education. For Federal inmates the average grade completion was 9.7 years and for state and local corrections facilities the average was lower (8.5). The average inmate functions two to three grades below the actual number of school years completed. The majority of inmates will stay in custody less than two years, and 19 out of 20 of them will make an eventual return to society.

- It has been estimated that up to 90% of the adult inmates of the penal institutions are school drop-outs. The 1970 census indicated that possibly 25% of the adults of the general population dropped out before high school graduation. For the general population, the average completed grade level for adults was 12.1, while the figure was an average of 8.5 for adult inmates.

- In a recent study conducted by LEAA, it was estimated that 34% of the juvenile corrections population were functionally illiterate. (LEAA, #73-ED-99-0012, 1975).

- Although intelligence tests administered to federal inmates revealed that 87% of them scored "average" or "above average", the fact is that the majority of this population has neither the necessary social, educational nor vocational skills to realize their potential. As a group, offenders and ex-offenders are under educated, unemployed, and unemployable and represent a disproportionate margin, the lower economic levels and minority groups (p. V-2).

The most prevalent conditions studied have been mental retardation and learning disabilities. The research efforts for the most part suffered from

sample, definition, and sophistication factors; however, some general conclusions have emerged. Most studies have found an unusually high prevalence of mental retardation (12% - 15%) as compared to the general population (2% - 3%) (Smith, 1978). Secondly, efforts to identify the number of adjudicated youth who have learning disabilities have reported incidence figures ranging from 30% to 50% of the population depending on criteria. (See Appendix A). Regardless of the actual figures, there is sufficient evidence to warrant the suspicion that the incidence of learning disabilities occurs at a higher rate in the adjudicated population than in the general population.

In recent years, a number of social scientists, judges and educators have observed that many juvenile delinquents have learning problems. Some have suggested that children with learning disabilities are especially likely to engage in delinquent behavior and, as a result, get into trouble with the law.

In order to find out if learning disabilities lead to juvenile delinquency, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), an agency of the U.S. Department of Justice, funded the Association for Children with Learning Disabilities to conduct a special program of instruction to help juvenile delinquents who have learning disabilities. The agency also funded the National Center for State Courts, located in Williamsburg, Virginia, to evaluate the instructional program and to try to determine the nature of the relationship between learning disabilities and juvenile delinquency. This educational and research program is being conducted in Baltimore, Maryland; Indianapolis, Indiana; and Phoenix, Arizona.

The results of the first phase of the study showed that, on the average, youths with learning disabilities are more likely to be found delinquent by a juvenile court than youths without learning disabilities. While 32% of the juvenile delinquents were found to have learning disabilities, only 16% of the nondelinquent public school children were found to have learning disabilities.

However, the researchers found that learning disabled children do not engage in more delinquent behavior than children who do not have learning disabilities. That is, while children with learning disabilities are more likely to be found delinquent by a court, they commit the same amount of delinquent acts as non-learning disabled youngsters. This means that the juvenile justice system, including perhaps the police, the prosecutors, and the courts, may be treating learning disabled youngsters differently than children who do not have learning disabilities, even though they have behaved the same. The researchers are now investigating why this might be happening (ACLD, 1979).

The General Accounting Office (GAO) in 1976-77 undertook a study of the extent of learning problems among institutionalized juvenile delinquents in Connecticut and Virginia, and described the then current efforts to the public schools and the correctional facilities in dealing with such problems. The GAO reported the need for this review because of:

1) significant increases in juvenile crime;
2) growing evidence indicating a correlation between children with learning problems and children demonstrating delinquent behavior patterns; and
3) expanding number of studies indicating that the public schools can have a measurable effect on reducing juvenile crime.

Overall, the results of the GAO's (1977) testing/incidence studies in Connecticut and Virginia substantiate similar studies conducted in other states which also showed considerable academic underachievement in their delinquent populations.

For example:

--90 percent of the adjudicated delinquents tested in a study conducted by the State of Colorado's Division of Youth Services were diagnosed as having learning problems.

--90 percent of the girls tested in a Tennessee State reformatory were 2 to 7 years below their grade in reading.

--70 percent of the delinquent youths tested in a Rhode Island study were found to warrant professional attention.

--57 percent of the youths referred to the Norfolk, Virginia, Youth and Family Clinic by the juvenile court were found to have general learning disabilities (p. 15).

Recognizing that a large segment of the delinquent population in institutions has major learning problems, questions will arise about the efforts, resources (materials and staff), and policy dictates needed by the correctional systems to address this situation.

Educational Policy Options for Adjudicated Handicapped Youth under the Procedural Safeguards Mandate of P.L. 94-142

An additional, but important consideration is related to the procedural safeguards per P.L. 94-142 afforded to handicapped youth, and their parents or guardians, in the identification and evaluation process; and the application of these procedural safeguards to the provision of educational services to adjudicated handicapped youth.

Timely Notice and Consent of Parent or Guardian

Section 121a.504 of the regulations for P.L. 94-142 details procedures for prior notice and parental consent. Section 121a.504 reads in whole:

> (a) Notice. Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:
> (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or
> (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.
> (b) Consent. (1) Parental consent must be obtained before:
> (i) Conducting a preplacement evaluation; and
> (ii) Initial placement of a handicapped child in a program providing special education and related services.
> (2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.
> (c) Procedures where parent refuses consent. (1) Where State law requires parental consent before a handicapped child

is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2)(i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in § § 121a.506-121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under § § 121a.510-121a.513.

(20 U.S.C. 1415(b)(1) (C), (D).)

Before a child can be considered for identification of either a present or suspected handicapping condition, a notice of the school district's intentions to evaluate must be presented to the child's parents, guardians or surrogate parent for permission to proceed with the identification/evaluation process. For the adjudicated youth suspected of having a handicapping condition at the time of entrance into the correctional system, the parent or guardian should notify the local education agency (LEA) that the handicapped youth is in the process of being considered for placement in a correctional facility and that all parties having a direct interest in the provision of special education services be informed, before court action is determined.

Nondiscriminatory Evaluation

Section 121a.532 of the regulations for P.L. 94-142 outlines the evaluation procedures to be used by all state and local education agencies in testing handicapped children and youth. This section reads in whole:

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(20 U.S.C. 1412(5)(C).)

After notice has been duly received and consent for evaluation given, the procedures outlined in the regulations cited above should be employed by both the LEA and the corrections facility, if the handicapped youth is to be tested at a correctional diagnostic intake center, before being assigned to a specific institution. One policy option is that prior diagnostic information compiled by the LEA can be incorporated into the court's records for use in helping the court determine the most appropriate institutional placement, according to the handicapped youth's educational needs and abilities.

Another policy option is that the LEA could be designated to act in a liaison capacity between the court and the correctional agency assigned to receive the adjudicated handicapped youth. The LEA could then ensure that the procedural safeguards of P.L. 94-142 are in place so that special education and related services can be provided to the handicapped youth after he/she is placed in a correctional institution.

Surrogate Parents

The procedural mandates per P.L. 94-142 for appointment of a surrogate is

an additional policy area to be considered by corrections agencies when a handicapped youth is incarcerated by a court for a status or criminal offense. The question of when to appoint a surrogate is specifically defined by the law and in the regulations. Section 121a.514 of the regulations reads in whole:

> (a) General. Each public agency shall insure that the rights of a child are protected when:
> (1) No parent (as defined in § 121a.1)) can be identified;
> (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
> (3) The child is a ward of the State under the laws of that State.
> (b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.
> (c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law.
> (2) Public agencies shall insure that a person selected as a surrogate:
> (i) Has no interest that conflicts with the interests of the child he or she represents, and
> (ii) Has knowledge and skills, that insure adequate representation of the child.
> (d) Non-employee requirement; compensation. (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.
> (2) A person who otherwise qualifies to be a surrogate parent under paragraph (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
> (e) Responsibilities. The surrogate parent may represent the child in all matters relating to:
> (1) The identification, evaluation, and educational placement of the child, and
> (2) The provision of a free appropriate public education of the child.
>
> (20 U.S.C. 1415(b)(1)(B).)

If a surrogate is appointed by the SEA, the corrections facility where the handicapped youth is placed should be notified by the SEA or the LEA, so that any planned educational or rehabilitative programs can be scrutinized by the surrogate for appropriateness. A possible policy option between the LEA (SEA) and the correctional facility is that timely notice be sent to the corrections agency, before

a handicapped youth is placed there, if the court or the SEA determines that the handicapped youth needs a surrogate to act in his special education interests.

The surrogate would also have the right under P.L. 94-142 to ask for an impartial due process hearing (Sec. 121a.504) if related services agreed to by the placement team were changed. In the instance of an adjudicated handicapped youth, the "placement team" would consist of the parent, guardian or surrogate, the courts, the LEA and the correctional agency or institution.

At this point of juncture, if policy provisions between the correctional agency and the State Education Agency (SEA), which has primary agency responsibilities for enforcing the procedural safeguard provisions of P.L. 94-142 (121a. 600 et.seq.), are in place, they would provide a viable method of conflict resolution. The specific policy options mentioned in this chapter with respect to the issues of identification, evaluation and appointment of a surrogate may also help to lessen any procedural duality that may exist when a handicapped youth, who has certain protections (outlined above) under federal law and regulations, is committed to a juvenile correctional facility by a state or federal court operating under different federal and state mandates. Chapter II of this paper will outline in further detail, policy option statements for use by decision makers in formulating interagency agreements with respect to educational program decisions affecting handicapped adjudicated youth. Chapter II will also address the basic policy issues inherent in providing an appropriate educational program, in the least restrictive environment (LRE) and in accordance with the provisions of the individualized education program (IEP) for handicapped youth committed to a juvenile corrections facility.

Chapter II
PLACEMENT AND PROGRAM OPTIONS AND THE INDIVIDUALIZED EDUCATION PROGRAM PROVISIONS OF P.L. 94-142

Situating the Policy Issues

The two primary state agencies involved with a handicapped youth, who commits an offense that warrants adjudication by a juvenile court, are the State Education Agency (SEA) and the state youth corrections agency. The particular statutory mandate governing each state agency determines the policy direction for that agency. The SEA is generally responsible for maintaining a thorough and efficient system of public schools and to provide free public education for all its citizens. The SEA is also empowered under P.L. 94-142, The Education for All Handicapped Children Act of 1975, (20 U.S.C. 1412(6)), with supervising the provisions of the Act relative to all other state agencies that provide programs and services to handicapped children and youth.

The primary mandate of the corrections agency is to provide rehabilitative services to help change the child's antisocial behavior and to a lesser extent, to protect society from the consequences of that antisocial behavior. While the continued education of a delinquent child is considered important by the correctional agency, in light of state compulsory school attendance laws for juveniles, one of their primary objectives is to change the child's behavior patterns that brought him/her into conflict with society. To meet the educational needs of a delinquent child, corrections institutions face several constraints, including 1) the relatively short time a child is confined and 2) the severity of the child's problems, emotional as well as academic, that have been built up through successive years of failure.

The policy focus then, is different for the SEA and the corrections agencies in carrying out the specific mandate of the agency with respect to the education of youth. The question of what constitutes "appropriate" education for handicapped youth is usually determined by the unique educational needs of the student.

The process of determining educational needs is outlined in P.L. 94-142 and certain procedural protections for the student and his/her parents are enumerated (§121a.500 et.seq.). The individualized education program (IEP) becomes the management tool (Weintraub and Abeson, 1972) by which the special education and related services are provided to the handicapped youth, in the least restrictive environment (LRE).

Appropriate Educational Programming

For the handicapped youth in a corrections facility, the educational provisions outlined in an individualized education program (IEP) prepared by his/her local education agency, may have little or no transferability or applicability in a correctional setting. However, certain policy decisions can be determined that can facilitate the transitional process of the handicapped adjudicated youth from the local school district to the correctional facility.

Critical decision points in the transitional process can be identified by the State Education Agency (SEA) and the corrections agency to ensure that the procedural and educational safeguards of P.L. 94-142 are implemented. This can be accomplished by establishing interagency cooperative agreements with respect to using the IEP as the mechanism for coordination and feedback between the local education agency (LEA) and the juvenile corrections institution. The IEP for each identified handicapped child is mandated by P.L. 94-142 and details the major educational goals and short-term objectives needed to ensure that appropriate special education and related services are provided to the student. The IEP needs to be formulated before any change of educational placement is made for a handicapped student. Policy decisions could be formulated that in the case of handicapped adjudicated youth, the court holding jurisdiction for placement disposition could use the IEP as documentary evidence to help the court determine placement options.

Policy decisions need to be formulated to ensure parental input into placement decisions. Since parental input into placement as determined by the IEP is an important provision of P.L. 94-142, the residual rights of the parents, after an adjudication hearing, are still protected by the use of the IEP.

Since the youth, upon adjudication, becomes a ward of the state, the state acts as a temporary guardian while the natural parents or guardians of the child still remain as his/her permanent protectors, in a limited sense. As guardians in this limited sense, the parents have residual or remaining rights that need to be maintained for educational purposes, as in the planning of the IEP, to be implemented within the correctional setting.

If the parents or guardians of the handicapped adjudicated youth are unknown, unavailable, or the child is a ward of the state, then the SEA may authorize the LEA to appoint a surrogate to act in the youth's educational interests, and to protect his/her rights under P.L. 94-142.

In any instance, one policy option that is available to both the local education agency (LEA) and the juvenile court is to notify the parents or guardian of the handicapped youth, that a change in the youth's placement is being considered by the court, and that the program provisions outlined in the youth's IEP should be updated to reflect the youth's current educational needs. Local education agency personnel, the parents or guardians, and appropriate court and corrections officials can meet and develop a current IEP for the handicapped youth before he/she is placed by the court in a correctional facility.

Refocusing the Concept of Least Restrictive Environment (LRE)

The implementation of the "least restrictive environment" (LRE) mandate of P.L. 94-142 (§121a.132) with respect to the traditionally more restrictive confinement practices of correctional agencies is a novel concept for the juvenile

corrections system, when a handicapped youth is adjudged to be in need of corrections placement. By its very nature, the correctional facility is restrictive and offers few alternatives for program and services options for handicapped youth. Many states' correctional systems place adjudicated youth in group and foster homes, local and community detention centers and various other facilities, depending upon the nature and severity of the offense committed by the juvenile (Education Commission of the States, 1976).

The General Accounting Office's (GAO) 1977 Report to the Congress on learning disabilities and juvenile delinquency highlighted five states' (California, Colorado, Connecticut, Texas and Virginia) juvenile corrections policies and practices with respect to the identification, evaluation and treatment of juveniles suspected to be handicapped. Analysis of the practices of the five states revealed few placement options outside the corrections system itself. Temporary placements at a diagnostic intake center are usually for evaluation purposes to determine what educational level the youth is functioning on and not for long term treatment programs.

Placements in half-way houses and inclusion in regular public school programs are offered to those youth who have demonstrated marked improvement in the "anti-social" behaviors that precipitated their adjudication. Placement in other than the traditional institutional setting is usually dependent upon the nature of the committing offense (status v. criminal) and the youth's adaptive/adjustment behaviors.

Commitment to a state mental health facility or an institution for the mentally retarded is considered by the court, when the adjudicated youth presents serious symptoms that cannot be met effectively within the correctional facility. For a handicapped youth with a mild handicapping condition, i.e. learning disabilities, there are few placement options outside the correctional facility.

Another factor affecting the educational placement or program offered to a handicapped adjudicated youth is the relatively short period of confinement as evidenced by recent statistics (mostly 1974) compiled by the GAO (1977) consultants, from the institutions visited for their research study. Their findings are reported below:

State	Number of institutions	Range of average period of confinement
California	3	10 to 11 months
Colorado	4	6 to 9 months
Connecticut (note a)	4	4.3 months - juveniles 10 months - adults, ages 16, 17, and 18
Texas	4	6 to 8 months
Virginia	7	6 to 13 months

a - In Connecticut, youths 16 to 18 were treated as adults, whereas in the other States they were considered juveniles.

> After reviewing the situations in the institutions in Connecticut and Virginia, the GAO consultants believed that total remediation of the types and seriousness of the learning problems evidenced by the tested children was not likely, given the short time the juveniles were confined.
>
> The consultants felt, however, that for some of the children the time spent in the detention center was the best opportunity they had had for a concentrated educational experience (p. 18).

Program options are limited for adjudicated youth, and for adjudicated handicapped youth the concept of placement in the least restrictive environment appropriate to meet their unique educational needs is apparently not feasible within the juvenile corrections system as it presently exists in many states. This policy paper will briefly review some recent policy studies on the "refocusing" of the least restrictive environment (LRE) concept, and how this refocusing can impact on programs and services for handicapped adjudicated youth.

A review of professional literature conducted by Higgins and Ross (1979), reveals that from the early 1960's through today, educators have attempted to design educational models that allow the greatest flexibility in the provision

of appropriate special education and related services to exceptional children. Originally, educational models were presented in the form of a hierarchy ordered according to the increased specialized needs of handicapped children (Reynolds, 1962; Deno, 1970). Reynolds and Birch (1977) have structured an instructional cascade model that suggests that instructional resources "move" to meet the educational needs of the child as a preferred practice for the future.

Higgins and Ross (1979) suggest that while not negating the educational intent of previous models, current educational thinking centers on a "refocusing" of the LRE concept. Consistent with the procedural policy requirements of the federal mandates, it is possible to document a more comprehensive formula regarding the provision of an appropriate education in the least restrictive environment. This evolving educational practice results in relating the LRE mandates with the specially designed instruction (I) required, the services (S) needed and the actual placement (P) of the exceptional child to receive that instruction. This may be graphically represented in the following equation: LRE = I+S+P.

Exploration of the components of information identified in the formula LRE = I+S+P, developed by Higgins and Ross, suggests that all concerned individuals (parents or surrogates, the handicapped youth, and school and court personnel) should consider additional information when making placement decisions regarding the provision of an appropriate education for handicapped youth.

Judicial Interpretation of the Least Restrictive Environment (LRE) Mandate

Several recent court decisions and some pending cases are making application of the least restrictive environment (LRE) mandate of P.L. 94-142, in deciding appropriate placements for handicapped children and youth. Certain particular court cases and decisions that have relevance to the policy issues raised in this study of adjudicated handicapped youth will be discussed in this section.

Present advocates in right to education cases, have sought to bring a closer examination of the "rational basis" and "duty of care" doctrines, in testing the constitutionality of state laws and regulations affecting the educational placement of handicapped schoolchildren by establishing the legal and educational rights of the handicapped, derived from application of the Brown decision, along with recent federal laws. Both P.L. 94-142 and Section 504 Regulations mandate procedural safeguards to accord due process of law, a free appropriate, public education, in the least restrictive (alternative) environment, and an educational program suitable to meet the unique needs of the handicapped student.

Doe et al. v. Bradley, Civil Action No. 7980-I (Tenn.), is the first class action, right to treatment, suit involving adjudicated handicapped youth, to be brought under both state law and the federal Education for All Handicapped Children Act of 1975 (P.L. 94-142). The class is composed of all mentally retarded residents, present and future, in the custody of all juvenile correction institutions under authority of the Tennessee Department of Correction. The plaintiff class alleges a failure on the part of the state to provide the necessary education, medical, rehabilitative and psychological services that would constitute fair and humane treatment for incarcerated mentally retarded juvenile delinquents and status offenders.

The plaintiffs assert that their confinement is in violation of that section of the Tennessee Code (49-2901 et. seq.) which provides that all handicapped children are to receive special education services sufficient to meet their needs and to maximize their capabilities, regardless of what school they attend or in what institution they reside. Plaintiffs allege that the Department of Correction is an eligible "school district" within the definition of the Tennessee Code (TCA 4-655) and thus is eligible for funds from the Department of Education (per P.L. 94-142) to provide such services. In not obtaining such funds, the

Department of Correction has failed to fulfill its obligations as a local school district. Also, the plaintiffs assert, since the Department of Education has overall responsibility to provide these services, or to cause them to be provided by the local school district, regardless of the question of custody, they have failed to fulfill this statutory duty.

The plaintiff class has advanced arguments of discrimination under Section 504 of 29 U.S.C. 760 (6), which prohibits discrimination against any handicapped individual, solely by reason of his handicap, under any program receiving federal financial assistance. They also assert that their confinement is in violation of the Due Process Clause of Article 1, Section 8 of the Tennessee Constitution and the 14th Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment; and that the acts and omissions of the defendants are violative of their rights as a class under the Civil Rights Law of 1879 (42 U.S.C. §1983).

The plaintiffs ask for relief for themselves and for their class from the court under the Federal and Tennessee Constitutions, and the appropriate state and Federal Statutes because their rights to treatment are present rights and must be immediately respected. They also ask for a temporary and permanent injunction to be issued to compel the defendants in this action to provide "treatment and habilitation" in settings "least restrictive of their freedom", and "commensurate with their individual needs".

During the Discovery Phase of this action, abuse charges were filed by attorneys for the plaintiffs against the Department of Correction. Abuse of all Juvenile inmates, including the mentally retarded plaintiffs was found to be widespread by a fact finding committee appointed by the Chancery Court. Because of the urgency of the situation a separate order and injunction decree was issued in February, 1979, by the court, which retains jurisdiction on this matter. A ruling on the right to treatment issues is still pending before the Court.

Attorneys for the plaintiffs in the Doe case used as precedent another Tennessee right to education case brought under the state Mandatory Education for the Handicapped Law and Federal statutes (14th Amendment and Section 504 of P.L. 93-112). At issue, in the Val Rainey v. Tennessee Department of Education, Civil Action No. 3100 (Tenn.), case is the total and partial exclusion of handicapped children from a free and appropriate special education even after the State Department of Education was mandated by a July, 1974 consent agreement to provide services. In September, 1974 plaintiffs filed a petition for contempt of court and relief for children still denied a right to education. The Chancery Court found violations of the first consent agreement along with Section 504 and 14th Amendment violations. A new decree was ordered which spelled out:

1) Defendants give court a list of those children excluded by local education agencies and reasons for the exclusion plus a report of the steps taken to implement the decree;
2) By July, 1976, provide a plan to implement the first consent agreement; and
3) To enforce the Tennessee compulsory attendance requirements.

Injunctive relief was finally granted in December, 1977 to the juvenile plaintiffs in the suit by the Chancery Court, and class injunctive relief was granted in 1978, invalidating certain residency requirements for the education of deinstitutionalized handicapped children which were found to be in violation of the Federal requirement (per P.L. 94-142) of least restrictive environment.

The least restrictive environment provision of Rainey as defined by the Chancery Court, is being used as precedent by the attorneys for the handicapped incarcerated plaintiffs in the Doe case now pending.

Another recently decided case, Mattie T. v. Holladay, Civil Action No. DC-75-31-S (N.D. Miss.), has similarity to the Doe case with respect to the nature of the class (all school aged children classified as handicapped in the state). Although the 26 individual plaintiffs in Mattie T. were either 1) handicapped children either totally or functionally excluded from an education or 2) non-handicapped children who had been misclassified and inappropriately segregated into "special education classes", and the individual plaintiffs in Doe are mentally incarcerated youths, both groups were charging inappropriate placement, and placement not considered to be in the least restrictive educational environment to meet their unique educational needs. Mattie T. is considered the first comprehensive court order under P.L. 94-142 to specify the state's responsibilities for implementing the federal law.

The legal principles set out by the district court in the Mattie T. case may have far reaching effects on future court cases brought under P.L. 94-142, including the Doe case discussed here. One of the major components of the consent decree in the Mattie T. case which has implications for the LRE argument being advanced in the Doe case is the requirement that all state agencies administering institutions must develop specific plans with local school districts for placement of many institutionalized children into local district day programs. The state agencies must also make provision that placement in these noninstitutional programs be part of the individualized educational program (IEP) process. This decree also establishes a system of surrogate parents to represent children in institutions.

Educational Policy Options for Adjudicated Handicapped Youth Under P.L. 94-142

The educational policy implications of the Doe, Rainey, and Mattie T. cases, highlighted above, for handicapped adjudicated youth, rest on the application

of the LRE, IEP, and procedural safeguard mandates of P.L. 94-142. These mandates taken as a whole form a trilogy of guarantees, that appropriate special education and related services will be provided to the adjudicated handicapped youth. In practice, these guaranteed rights are often forgotten or completely bypassed because enforcement policies are lacking between the State Education Agency (SEA) and the appropriate correctional agency. Also, as was mentioned previously in this paper, the specific mandate for each state agency is different in intent. Rehabilitation of the youthful offender is the primary objective of the corrections agency; while free, public education is the goal of the SEA. Although the corrections agency is obliged under each states' compulsory school attendance laws to provide education programs, this is seen as a secondary objective after the antisocial behavior of the youth has been remediated.

However, certain policy options can be advanced that will offer decision makers latitude in formulating policy decisions concerning the institutional placement of adjudicated handicapped youth.

Options Related to the Individualized Education Program (IEP)

Another critical decision point for policy makers involves the formulation and implementation of the individualized education program (IEP) for the adjudicated handicapped youth. Given the nature of the adjudication process, it is not always possible to have an IEP in place when a handicapped youth is first placed in a correctional facility. Even when the local education agency (LEA) has developed an IEP for the handicapped youth, the particular goals, objectives, educational needs and related service needs, may not be able to be met within the correctional facility because of inadequate staffing and program resources.

The lack of educational resources and opportunities for all adjudicated youth, and especially for the handicapped youth, is an area of concern for both the SEA and the corrections agency. Federal programs like the Elementary and Secondary Education

Act of 1965 (ESEA, P.L. 89-10 as amended) and particularly Title I of that Act, offer supplemental program resources (people and materials) to aid youth in correctional facilities. Meta Metrics, Inc. (1977) reported that Title I grants account for approximately one-third of all federal funds expended for corrections education. §123 of Title I (ESEA) has been expanded by Part 116C. - Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions For Neglected or Delinquent Children, and final regulations for this Part will be published this summer. This Title I program will offer more direct funds for state institutions to aid adjudicated handicapped youth. Federal monies are also available to state institutions from P.L. 89-313 (grant monies for handicapped children in state institutions) and from P.L. 94-142 (categorical aid monies for identified handicapped children - flow through allocation per Child Count from the SEA). Given that more funds are being made available to state correctional facilities, more special education resources and related services can be provided to handicapped adjudicated youths.

The IEP is the vehicle to insure that the appropriate special educational resources are provided to identified handicapped youth. Policies between the SEA and the corrections agency are vital in determining that the IEP is operational for the handicapped youth at the time of placement in the institution. A needs assessment of the correctional agencies' staff and materials resource allocations can delineate those facilities that offer the most complete programs and services to meet the unique educational needs of the particular handicapped youth at the time of the adjudication hearing. The court, parents, or surrogate can then develop with the corrections officials an IEP which will detail the special education and related services that the handicapped youth needs; and not just list those services currently available at the particular corrections facility.

Options Related to the Least Restrictive Environment (LRE)

Inherent in the concept of the least restrictive environment (LRE) mandate of P.L. 94-142 (§121a.550-556) is the provision for a continuum of alternative placements. Along this continuum, there are opportunities for alternative placements, i.e. private day-care treatment facilities, homebound instruction, private schools, self-contained special education classes within a public school, resource room programs within a public school, and itinerant teacher/tutoring programs. These alternative programs are all designed to meet the unique special education needs of the handicapped child; depending upon the ability level, degree of involvement of handicapping condition, and maturational level of the child.

There is a scarcity of placement alternatives available to the adjudicated handicapped youth both within the traditional corrections facility, and outside of the institutional system. Public school release programs are usually limited to those adjudicated youth who are mentally, emotionally and socially stable, or who offer little or no discipline problem for the receiving school system. Adjudicated handicapped youth, for the most part, do not have the academic, social or vocational skills to be judged as being eligible for a public school release program or work release program. Even within the correctional agency itself, handicapped students are often regarded as functioning too low to benefit from Title I (ESEA) reading or math programs and too disruptive or too slow to be placed in vocational training programs.

P.L. 94-142 clearly mandates in §121a.550 subpart (b) of the regulations:

> "Each public agency shall insure: (1) that to the maximum extent appropriate, handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped;"

And in §121a.551 subpart (a):

> "Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services;

And also in §121a.552 subpart 3 (b):

> The various alternative placements included under §121a.551 are available to the extent necessary to implement the individualized education program for each handicapped child; and (d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs." (20 U.S.C. 1412 (5)(B).)

Since correctional agencies are state institutions where handicapped students may be placed after an adjudication hearing, they are eligible to participate in receiving 94-142 monies from the State Education Agency (SEA), and if indeed the state corrections agency submits a child count to the SEA of handicapped youth within its institutions, then the compliance mechanisms of P.L. 94-142 with respect to the LRE mandates, are enforceable by the SEA.

Possible policy options for corrections officials can be considered in the programs and services area available to adjudicated handicapped youth. In any instance, the individualized education program (IEP) developed by the parents, guardian or surrogate, the corrections officials, and the LEA, can specify those program options and alternative placements which can more appropriately meet the educational needs of the youth, even if the "placement" is considered more restrictive in the corrections facility.

Certain states are beginning to recognize the needs of that population of adjudicated handicapped youth and experimental model programs are currently being offered within the traditional corrections facility. These model programs will be highlighted in Chapter III. In addition, Connecticut, New Jersey, Louisiana, North Carolina, and Illinois have established a Local Education Agency (LEA), also called a Special School District within the state corrections agency and these LEA's are incorporated within the SEA and are eligible to receive P.L. 94-142 funds to provide services and programs for adjudicated handicapped youth within corrections facilities.

Chapter III
STATE AGENCY AGREEMENTS

Sole State Agency Responsibility

It was clearly the intent of Congress that no handicapped child be excluded by recipients of federal funds for the education of the handicapped, and that all involved agencies follow a policy of zero reject. This policy of zero reject means that all handicapped children of school age must be afforded a free appropriate public education (§612(1)), and that each state adopt policies and formulate Annual Program Plans (APP) for achieving those goals.

Congress sought to make the zero reject principle effective by providing for one and only one point of responsibility and accountability. It required a single state agency, the state education agency (SEA), to be responsible for assuring the Department of Health, Education and Welfare (HEW), that the requirements of P.L. 94-142 are carried out. In addition, all educational programs for handicapped children within the state, including programs administered by another state or local agency (such as departments of social services, mental health, mental retardation, human resources, public health, corrections or juvenile services), were placed under the general supervision of the persons responsible for educational programs for the handicapped in the SEA; must be monitored by the SEA; and must meet the SEA's educational standards (Sec. 612(6), and Sec. 121a.134 and .600-.602).

Each state participating in receiving federal funds generated by P.L. 94-142, must submit to the Bureau of Education for the Handicapped (BEH) of HEW, an Annual Program Plan (APP) outlining each states' goals, objectives and activities for satisfying the mandates of the law. The APP is updated annually, and one of the additional requirements of the law is an assurance that policy statements are in effect that detail the SEA's responsibilities for compliance and monitoring of all agencies providing programs and services to handicapped children and youth.

State Interagency Agreements

Since the focus of this policy paper is the State's efforts to provide special education and related services to adjudicated handicapped youth, The Policy Options Project surveyed the annual program plans submitted to BEH by participating states, to ascertain 1) if policy statements with respect to the sole state agency provision of P.L. 94-142 were in place and 2) what types of interagency agreements between the SEA and other state agencies were mentioned in the documents, especially those agreements between the SEA and the Department of Corrections.

The following Recent Trends in State Interagency Agreements Chart represents a state by state breakdown of state interagency agreements, and also particular state laws impacting on agencies' duties and responsibilities for the provision of special education to handicapped youth.

RECENT TRENDS IN STATE INTERAGENCY AGREEMENTS CHART

P.L. 94-142 § 121a.600 et seq.	F = Final APP - D = Draft APP	Sole State Agency Responsibilities per the Annual Program Plan (1979)	Cooperative Agreements between the State Education Agency (SEA) and the Agencies following -	Department of Corrections (Youth Services) (Youth Commission)	Department of Mental Health	Department of Human Resources (Social Services) SC (Public Welfare) PA	Department of Vocational Rehabilitation	Department of Vocational Education	Department of Mental Retardation (Special Education) CA	Department of Health Services	State Schools for the Blind, Deaf	Other - (Headstart) MD, NJ, NC., WI. (Parent Consumer Organization) IL (Board of Regents) Iowa
Alabama	D	X										X[4]
Alaska	F	X		X		X			X			
Arizona	F	X										X[5]
Arkansas	F	X										
California	D	X		X	X		X		X	X		
Colorado	F	X		X		X						X[6]
Connecticut	F	X		X					X			X[7]
Delaware	D	X		X		X						
Florida	F	X					X			X	X	X[8]
Georgia	D	X				X						
Hawaii	F	X		X								X[9]
Idaho	F	X				X	X	X			X	X[10]
Illinois	F	X		X	X	X	X					X
Indiana	D	X										X[11]
Iowa	F	X										X
Kansas	D	X										X[12]
Kentucky	F	X					X				X	
Louisiana	F	X	(ACT 754)	X	X	X						X[13]
[illegible]	[illegible]	X										
Maryland	F	X		X	X	X		X				X
Massachusetts	F	X		X	X	X						X[14]
Michigan	F	X			X	X					X	
Minnesota	F	X								X	X	X[15]
Mississippi	F	X			X						X	X[16]
Missouri	F	X		X[1]	X	X						X[17]
Montana	F	X		X	X	X	X					X[18]
Nebraska	F	X	(NC 43-641)		X					X	X	X[19]
Nevada	F	X				X						
New Hampshire	F	X										X[20]
New Jersey	D	X		X	X	X	X					X
New Mexico		N/A										
New York	F	X		X	X	X						X
North Carolina	F	X	(CH. 927)	X[2]		X				X		X[21]
North Dakota	D	X										
Ohio	D	X		X	X							X[22]
Oklahoma	F	X			X	X	X	X		X		X[23]
Oregon	F	X	(ORS-343.041)		X		X					X[24]
Pennsylvania	F	X				X						
Rhode Island	F	X										X[25]
South Carolina	D	X		X	X	X						X[26]
South Dakota	F	X		X[3]		X						X[27]
Tennessee	F	X										X[28]
Texas	D	X										X[29]
Utah	F	X			X	X						
Vermont	F	X										X[30]
Virginia		N/A										
Washington	D	X				X						X[31]
West Virginia		N/A										
Wisconsin	F	X										X[32]
Wyoming	F	X										X[33]
D.C.		N/A										

NOTE: All Reference Notes appear on the following page.
N/A - No APP for FY 79 submitted as yet to BEH.

Developed by
The Policy Options Project, July 1979

RECENT TRENDS IN STATE INTERAGENCY AGREEMENTS CHART

Reference Notes

NOTE: Unless otherwise noted all reference data is from the FY 1979 APP's submitted to BEH by the respective states.

X^1 - Missouri, The Division of Youth Services and Division of Corrections is under the Department of Family and Social Services.

X^2 - North Carolina, Youth Corrections is in Department of Human Resources - acts as an LEA.

X^3 - South Dakota, Law #13-37-14 places Youth Corrections under the State Board of Charities.

X^4 - Alabama, Attachment #1 refers to Interagency Agreements.

X^5 - Arizona, Attachment A refers to Interagency Agreements.

X^6 - Colorado, Department of Institutions.

X^7 - Connecticut, The Special School District is in the Department of Mental Retardation.

X^8 - Florida, Under development is a special LEA provision for corrections education.

X^9 - Hawaii, This is a total State System and Consent Decree and Order #C.41768 (May, 1977) mandates Interagency Agreements.

X^{10} - Idaho, Department of Health and Welfare.

X^{11} - Indiana, Refers to Policy Statement for mention of Interagency Agreements.

X^{12} - Kansas, Appendix F refers to Interagency Agreements.

X^{13} - Louisiana, Special School District #1.

X^{14} - Massachusetts, Bureau of Institutional Schools.

X^{15} - Minnesota, Crippled Childrens Services.

X^{16} - Mississippi, Division of Mental Retardation is under Department of Mental Health.

X^{17} - Missouri, Family and Social Services.

X^{18} - Montana, Department of Institutions.

X^{19} - Nebraska, Public Welfare.

X^{20} - New Hampshire, Total LEA responsibility.

X^{21} - North Carolina, Supplementary Security Income (SSI) Program.

X^{22} - Ohio, Attachments 1 and 7 refer to Interagency Agreements.

X^{23} - Oklahoma, Ceberal Palsy, Preschool Deaf and Social Security Programs.

X^{24} - Oregon, Childrens Service per Executive Order (OE)-77-22 (1977).

X^{25} - Rhode Island, Attachment 10 refers to Interagency Agreements.

X^{26} - South Carolina, Private Schools, Private Residential Schools, Private Day Care Programs.

X^{27} - South Dakota, All other agencies.

X^{28} - Tennessee, Attachment 13 refers to Interagency Agreements per the consent decree in the Val Rainey v. Tennessee Department of Education case (1978).

X^{29} - Texas, Does not specify agencies in statement.

X^{30} - Vermont, Refers to Interagency Agreements as being in progress.

X^{31} - Washington, Department of Social and Health Services Preschool Programs.

X^{32} - Wisconsin, Refers to Appendix R - DHC #78-14 for Interagency Agreement with Headstart Programs.

X^{33} - Wyoming, Does not specify agencies in statement.

In analyzing the preceding policy requirements detailed on the Recent Trends in State Interagency Agreements Chart, of policy statements, interagency agreements and particular state laws, certain states emerged as having policies and agreements that need to be explored and highlighted.

In New Jersey - The Garden State School District was created with the enactment of Chapter 187, New Jersey Laws of 1977, to administer education programs in correctional institutions. This special school district also is eligible to receive CETA funds and ESEA Title I funding for students in correctional facilities. The Garden State School District has also been incorporated and designated as a local education agency (LEA) for P.L. 94-142 funding and classification purposes.

In Louisiana - Act 754, passed on July 26, 1977, by the Louisiana legislature, set up Special School District #1 as an LEA for purposes of P.L. 94-142 funding and program provisions. The regulations for A.754 were approved on September 20, 1978 and they detailed agreements between the SEA and the Departments of Corrections, Health, and Human Resources, to provide placement and programs for handicapped youth.

In Connecticut - Public Act #77-587, was passed for the purpose of establishing a Special School District within the Department of Mental Retardation to receive funds and program support from P.L. 94-142 and P.L. 89-313.

In Hawaii - By a Circuit Court Consent Agreement and Order in the Silva et al. v. Board of Education, State of Hawaii, (C.A. #41768), case the state education agency (SEA) was given sole state agency responsibility for the education of all handicapped children; and interagency agreements were ordered developed with all other state agencies providing services to handicapped children. The State of Hawaii operates a completely state financed education system.

In Illinois - The Lincolnland Special School District operates as an LEA within the Department of Youth Corrections for the purpose of providing special education programs and related services to adjudicated handicapped youth within

the corrections system. Interagency agreements are also in force to meet the provisions of P.L. 94-142, between the SEA and other state agencies providing services to handicapped children and youth.

In North Carolina - Chapter 927 of the General Laws of North Carolina, passed by the legislature in 1977, established the SEA as the state agency with sole responsibility for administering special education programs and provided for interagency agreements between the SEA and those other state agencies (Head-start, Division of Health Services and the Supplementary Security Income (SSI) program) that provide services to handicapped children. Also, under this law, the Department of Youth Corrections was moved to the Department of Human Resources and was designated as an LEA to receive funding and program support under P.L. 94-142.

In South Dakota - The General Provisions in Chapter 24:05:07:08 of the South Dakota Code provide for interagency cooperation between the SEA and all other state agencies servicing handicapped children. Also, in SDCL 13-37-14, the Department of Youth Corrections is under the State Board of Charities for funding and programming purposes.

In Alaska - By state statute the state education agency (SEA) is the only agency allowed to administer education programs, including all special education programs run by other state agencies. Interagency agreements are also in place to provide for special education services with the Departments of Youth Corrections and Human Resources.

In Tennessee - Cooperative interagency agreements are presently in progress between the SEA and other state agencies, including the Department of Corrections and Department of Mental Health as a result of recent proceedings in the Doe case (C.A. #7980-I) presently before the Chancery Court, to provide special education and related services to adjudicated handicapped youth.

Provisions for interagency agreements between the SEA and the Department of Youth Corrections are also mentioned in the 1979 Annual Program Plans of South Carolina, Oklahoma, Ohio, New York, Montana, Massachusetts, Maryland, Delaware, Texas and California. Also, according to the 1979 Annual Program Plans, forty-three states (43) presently have some manner of interagency agreement operational between the SEA and other state agencies providing programs and services to handicapped children. The U.S. Territory of Puerto Rico has a policy statement with respect to the sole state agency responsibility mandate of P.L. 94-142 and a declaration of intention was filed to hold interagency meetings for the purpose of securing cooperative agreements between the education agency and other agencies providing services to handicapped children.

So far, seventeen (17) states have some provision as stated in the FY 1979 APP, for interagency cooperation between the SEA and the state youth correctional agency either in the form of policy statements or state laws and regulations. These interagency agreements make it possible for the SEA to carry out the mandates of P.L. 94-142, with respect to the provision of free appropriate special education and related services to handicapped youth. For adjudicated handicapped youth placed in correctional facilities, there is greater opportunity for expanded special education programs and services when interagency cooperative agreements are in effect between the SEA and the appropriate youth services or correctional agency.

Some of the bureaucratic confusion mentioned in recent studies (Morse, 1976; GAO Report to Congress, 1977; Meta Metrics Inc., 1977; Turnbull and Turnbull, 1978) with respect to conflicting agency mandates, overlapping responsibilities, budgetary constraints and program authority, may be improved when the agencies involved with providing special education services to handicapped youth and especially to handicapped youth in correctional institutions, work together in a

concerted manner under the direction of the SEA. There are still areas on both the state and federal levels where inter and intra agency coordination needs to be addressed, in light of the educational mandates of P.L. 94-142 and the SEA responsibility for carring out those mandates for handicapped youth.

Federal Interagency Coordination with the States

Meta Metrics, Inc., in its 1977 report to the Department of Health, Education and Welfare (HEW) commented on mechanisms for possible interagency coordination on the federal level with those agencies involved in corrections education efforts.

They listed several Acts which give statutory authority to certain agencies, programs and departments to promote educational efforts among youthful offenders and to help combat juvenile delinquency. Under the Law Enforcement Assistance Administration (LEAA) are several laws that are relevant to the subject of providing educational programs for youthful offenders and also have implications for handicapped youthful offenders. The laws under which the LEAA operates are:

1) Juvenile Justice and Delinquency Prevention Act of 1974

Section 204 (b)(2)(4) and (f) of the Juvenile Justice and Delinquency Prevention Act grants LEAA the authority to coordinate certain juvenile delinquency related efforts of other Federal agencies. Effective use of this authority, which would rely in part on other agencies' acceptance of it, offers a possible vehicle by which to coordinate Federal efforts, in at least providing corrections education to juveniles.

The 1974 Act also established a National Advisory Committee for Juvenile Justice and Delinquency Prevention. This interagency coordinating council is responsible for making annual recommendations to the LEAA administration on planning, policy, priorities, operations and management of all Federal juvenile delinquency program efforts. The committee could place a special emphasis on developing and implementing juvenile corrections education programs as an effective means to combat juvenile delinquency.

2) Omnibus Crime Control and Safe Streets Act of 1968 and the Crime Control Act of 1973

This Act which established the Law Enforcement Assistance Administration (LEAA) in the Department of Justice, also provides an excellent mechanism

by which to coordinate corrections education program activities. With the 1971 amendments, the states were required to submit in order to qualify for funds, a state plan to LEAA. These comprehensive plans had to demonstrate to LEAA's satisfaction that the state: provides satisfactory emphasis on the development and operation of community-based correctional facilities and programs, including diagnostic services, halfway houses, probation, and other supervisory release programs for preadjudication and post-adjudication referral of delinquents, youthful offenders and first offenders and community-oriented programs for the supervision of parolees.

Meta Metrics (1977) reported that, passage of the Crime Control Act of 1973 placed even greater emphasis on juvenile delinquency requiring that the states include a juvenile delinquency component in their comprehensive state plans as a condition of receiving LEAA funds. It is this funding mechanism - approval of state plans - that provides LEAA a means to coordinate, at least at the state level, corrections education programming efforts. LEAA guidelines could be developed to make it a prerequisite that state plans include provisions for establishing, developing, and coordinating juvenile delinquent corrections education program funding in a comprehensive and systematic manner.

HEW has a legacy of correction education program involvement and consequently, to a certain extent, program coordination. The Juvenile Delinquency and Youth Offenses Control Act of 1961 gave HEW responsibility for providing categorical grants to communities, institutions, and agencies to both plan and start innovative demonstration and training programs. These programs included school programs for the disadvantaged, subsidized job training for out-of-school and out-of-work youths; and community-based correctional programs. The Act was extended in 1964 and 1965 and by 1967 approximately $47 million in appropriations were spent under the Act. However, with the Office of Economic Opportunity increasing funding of similar types of effort, most of the demonstrations projects funded under Control Act of 1961 were transferred to OEO control in the mid and late 1960's.

With the passage of the Juvenile Delinquency Prevention and Control Act of 1968, HEW assumed responsibility for coordinating all Federal activities

in juvenile delinquency, youth development and related fields. However, coordination of all Federal activities was frustrated by 1) inadequate administration caused in part by the overlapping responsibilities of the Act (1968) concerning HEW and LEAA roles and also by 2) HEW's failure to request more than a small portion of the authorized appropriations for Fiscal 1970 for coordinating functions.

Since now, with the passage of P.L. 94-142, the Bureau of Education for the Handicapped (BEH) of HEW has responsibility for approving the Annual Program Plans (APP) submitted by each participating state that applies for P.L. 94-142 funding, and now that federal interagency agreements are being negotiated by BEH, handicapped youth, both in public schools and institutions, and youth incarcerated in state and federal correctional facilities have a greater opportunity for improved delivery of special education and related services.

Interagency agreements between Federal agencies, the SEA and other state agencies providing educational services to handicapped youth are presently in the formative stages, as was mentioned in detail earlier in this paper. In addition, policy decisions still need to be made with respect to the areas of:

- provision of related services to handicapped youth in correctional institutions:
- personnel preparation, including pre- and inservice training for individuals working with handicapped youth in correctional facilities;
- funding considerations, where different federal programs have specific eligibility criteria; and
- educational considerations for adjudicated handicapped youth aged 18-21 per P.L. 94-142.

Chapter IV will briefly explore these areas for future consideration in light of the mandates of P.L. 94-142.

Chapter IV
AREAS FOR FUTURE CONSIDERATION

Personnel Needs and Inservice Training

Public Law 94-142 provides for a comprehensive system of personnel development, including participation of other agencies and institutions, inservice training and technical assistance to local education agencies (§121a.380-.387). The State Education Agency (SEA) is charged with the overall responsibility for implementing appropriate personnel development and inservice training programs for state and local education agency personnel and for other agencies which provide services to handicapped children and youth.

One of the major problems reported in the GAO Report to Congress (1977) was the lack of adequately trained teaching staffs at the juvenile correctional institutions visited by their consultants. The report noted that even if initial diagnostic testing of the incarcerated handicapped population provided accurate identification of learning problems, the institutions lacked special education teachers trained to help children overcome such problems. The GAO (1977) report stated that, "of the 353 teachers in the institutions visited, only about 6 percent were certified in special education" (p. 20). It was also noted that while certification is not the only measure of a teacher's ability to effectively deal with learning problems, it is a readily available measure that does not involve having to specifically observe each teacher's performance to judge his/her ability. The following chart represents a listing of the states and teachers studied in the GAO (1977) report:

State	Total teachers	Certified	
		Number	Percent
California	119	3	3
Colorado	32	3	9
Connecticut	32	1	3
Texas	96	9	9
Virginia	74	5	7
	353	21	5.9

The random testing of delinquents for learning problems conducted by the GAO's consultants in Connecticut and Virginia showed that 28 and 23 percent, respectively, of the institution population had primary learning problems. An additional 15 and 23 percent, respectively, were classified as having limited academic potential. In the Nation's public school systems, all of these children could be classified as handicapped and, therefore, would qualify for special education programs taught by certified special education teachers.

Not only are special education teachers in short supply, but classroom teachers in correctional facilities generally are not trained in how to recognize or evaluate a juvenile's learning problem or which teaching methods and techniques should be used in attempting to remediate such problems.

Clearly, there is a need for personnel training in both the public schools and in correctional settings. Other recent studies (Atlanta (Georgia) Association for Retarded Citizens, Inc., 1975; Legislative Research Commission - Kentucky Report #125, 1975; Santamour and West, 1977) have shown that personnel in the judicial system know little about the problems and special needs of the handicapped offender. Inservice training programs sponsored by the SEA can help to sensitize the corrections community as well as police and court officials, to the unique needs of the handicapped offender and to the mandates of P.L. 94-142 that provide, under law and regulation, procedural and educational safeguards to the handicapped youth.

Funding and the Provision of Related Services

Public Law 94-142 specifies the provisions to be used in implementing special education and related services for handicapped children and youth. Section 121a.13 of the regulations for P.L. 94-142 defines the term "related services" as it is used in the law:

(a) As used in this part, the term "related services" means

transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(20 U.S.C. 1401(17).)

Also, in Section 121a.14, special education is defined as it is used in the law:

(a)(1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401 (16).)

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(20 U.S.C. 1401 (16).)

These definitions for special education and related services per P.L. 94-142, focus on the unique educational needs of the handicapped child and/or youth and

do not limit the provision of services to what is currently available in either the public school setting or the correctional facility.

Probably the greatest obstacle to comprehensive programming is lack of funding (Hedge, 1979). Studies indicate, however, that programs for the handicapped offender may be considered economical (Wisconsin Department of Health and Social Services Report, 1978). Another study suggested that the average rehabilitated retarded offender returns seven to ten dollars in income tax for each dollar spent on his/her rehabilitation (Santamour and West, 1977, p. 10). The Kentucky Report #125 (1975) reported that present educational and rehabilitative programs for handicapped offenders were ineffective; and that any future programming efforts would have to be individualized so each inmate could receive personal attention. The Georgia Study (1975) found that if more funding were available, most prison officials and their staffs would welcome new programs for the handicapped offender.

Inadequate funding often results in acute understaffing. What few resources and equipment are available for providing related services to handicapped youth often remain unused because of the lack of trained personnel. The shortage of speech, physical and occupational therapists in a juvenile correctional facility means that these needed related services, which might be necessary for the handicapped youth to benefit from special education instruction and programming available. Even if funding is adequate, the nature of the correctional setting and the work environment, make the process of attracting qualified employees that much more difficult. Smith (1978) reported in a fact finding study of special education and related services in youth corrections facilities in Tennessee, that related services, other than medical, dental, speech/hearing/ophthalmological diagnostics, are virtually non-existent. Even when there were limited related services, there appeared to be no formal mechanism for assuring speedy delivery

of referrals for a service, and no clear pattern for responsibility or monitoring of whether or not the service had been delivered.

As was previously mentioned, interagency cooperative agreements between the SEA and other state agencies providing programs and services for handicapped youth, can specify those areas where service delivery is acute and begin to address the policy issues in personnel preparation, inservice training and funding for the provision of related services. More indepth analysis and research need to be conducted on effective teacher-training programs that have application to handicapped youth in correctional facilities. Some experimental programs in Virginia, Maryland, Indiana, Florida, and North Carolina are exploring the feasibility of school-release programs for handicapped offenders who need the specialized programs and services offered in the local school district where the correctional facility is located. Other states, as was mentioned previously, have designated by statute certain youth correctional facilities as local education agencies (LEAs) for the purposes of funding and programming per P.L. 94-142. Also, certain correctional institutions in Tennessee, Illinois, North Carolina and West Virginia offer a comprehensive range of special education programs and related services (diagnostic clinics, speech, physical and occupational therapy programs), to adjudicated handicapped youth.

Educational Policy Considerations for the Handicapped Offender Aged 18 to 21 under P.L. 94-142

Another area of interest and concern for educators, parents and advocates, for the provision of special education and related services to handicapped adjudicated youth, centers around those sections of P.L. 94-142 that speak to the timelines and ages for free appropriate public education (FAPE). Section 121a. 122 et.seq. of the regulations for P.L. 94-142 details the ages of eligibility, the timelines for enactment of the law, exceptions to the ages specified in the law and regulations, and the necessary documents which participating states

need to submit in the annual program plan (APP) relative to the timelines and exceptions.

Section 121a.122 reads in whole:

> (a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.
>
> (b) Documents relating to timelines. Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.
>
> (c) Exception. The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.
>
> (d) Documents relating to exceptions. Each annual program plan must:
>
> (1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and
>
> (2) Include a copy of each State law, court order, and other document which provides a basis for the exception.
>
> (20 U.S.C. 1412(2)(B).)

Since separate legislation is needed to enact the FAPE provision for ages three, four, five, eighteen, nineteen, twenty and twenty-one, if a state does not provide regular education programs and services in these age groups, advocates, parents, and professionals will need to make their state legislators aware of this possible gap in educational services for handicapped youth.

For the handicapped youth aged 18 through 21, considered and adjudicated as an adult, and placed in an adult corrections facility, special education and related services which are needed by the youth in order to benefit from prison-related rehabilitative programs, may be limited or non-existent. Currently, there are only three federally funded programs (ESEA-Title I, CETA, and the Rehabilitation Act of 1973) that offer direct services to disadvantaged or handicapped inmates in state and federal prisons.

Meta Metrics Inc., (1977) stated that federally funded corrections education programs are the result of scattered efforts at the local, state and national levels to address the problems of vocational, general and higher education for offenders. The key pieces of legislation under which these efforts are implemented are:

- Elementary and Secondary Education Act of 1965 (ESEA)

  Under Title I of ESEA, grants are provided to local educational agencies and to state administered institutions serving educationally deprived children. Title I accounts for approximately one-third of all federal funds expended for corrections education.

- Rehabilitation Act of 1973

  State rehabilitation agencies developed programs to provide vocational adjustment services to physically and mentally handicapped delinquents and inmates under state block grants.

- Comprehensive Employment and Training Act of 1973 (CETA)

  The Department of Labor provides job training and employment opportunities to economically disadvantaged, unemployed and underemployed persons under Title I of CETA. Title II provides transitional public service employment and Title II benefits special manpower groups.

- Higher Education Act of 1965

  Basic Education Opportunity Grants (BEOG) constitute a substantial program to benefit ex-offenders in obtaining an undergraduate education. The Teacher Corps (Title V) has operated programs in correctional institutions.

- Adult Education Act - ESEA Amendments of 1966

  Formula grants to states have resulted in the provision of adult

education programs through the secondary level to inmates in correctional institutions.

- Omnibus Crime Control and Safe Streets Act of 1968

  Block grants are awarded to state planning agencies and selected correctional education projects are funded. LEAA discretionary grants are awarded to corrections education projects (p. 6-7).

Another policy area that needs more clarification and indepth analysis concerns the ages and criteria used by the states to determine what constitutes a delinquent act, who is considered a delinquent child, and what offenses are considered to be status offenses (those acts applicable only to minor children).

According to Hutzler and Sestak (1977), thirty-three states presently have statutes that consider a delinquent act to be an offense committed by a minor child prior to having become eighteen years of age, that may or may not be considered a crime under applicable state or federal law, if committed by an adult.

Also, seventeen states, so far, have exceptions to the age 18 requirement for consideration of status as a juvenile offender or delinquent child. States such as Vermont, New York, Nebraska, and Colorado consider children who commit delinquent acts and who would come under the jurisdication of the Juvenile Justice System, as being under sixteen years of age. In Massachusetts, only those children between the ages of 7 and 17 years old, who commit delinquent acts, are treated as juveniles under state statute. Illinois, Michigan and South Carolina treat children under age seventeen as juvenile offenders and crimes committed by that population as delinquent acts.

The lack of uniformity among the states, in age eligibility for who is considered a juvenile and what crimes are classified as delinquent acts, can have implications for handicapped youth who come before a muncipal, state or federal court. If the handicapped youth resides in a state that considers persons over 16 and/or under 18 as an adult, then, he/she if adjudicated, may be confined to

an adult facility where educational resources are limited and the potential for physical or emotional abuse is increased.

Policy decisions need to be made that will address the issues relative to the ages and other criteria used by the states in determining juvenile status, what constitutes a delinquent act and what programs and services are available to divert children, especially handicapped children, from adult correctional facilities.

Although the provision of special education and related services to handicapped youth aged 18 through 21 by the states is considered to be permissive in P.L. 94-142, the intent of Congress is clearly in favor of helping the states provide special educational services for the young handicapped adult.

Recent studies (Children's Defense Fund, 1976; Meta Metrics Inc., 1977; Santamour and West, 1979) indicate that effective educational, vocational and rehabilitative programs for the handicapped young adult offender are an investment that can reduce recidivism and additional, higher welfare costs for both state and federal governments.

CONCLUDING STATEMENTS AND POLICY OPTIONS

Public Law 94-142, the Education for All Handicapped Children Act of 1975, has been considered a piece of landmark legislation, in that, the belief that all handicapped children have a right to a free, appropriate public education is now actualized in law, as well as in practice. The belief that all handicapped children have protected rights to an appropriate education is also extended to handicapped youth incarcerated in correctional institutions. The State Education Agency is charged under the federal law with insuring that the rights of handicapped youth are protected and that programs and services provided to the handicapped by other state and local agencies comply with the mandates set forth in P.L. 94-142. The judicial process by which a handicapped youth becomes committed to a correctional facility does not reduce the total state responsibility for providing those handicapped children with a free, appropriate public education.

Congruent with the intent of P.L. 94-142 for policy statements to be developed by state agencies to assure implementation of the provisions of the law, is the mandate to the states to develop cooperative working agreements and arrangements between the different state agencies to provide a continuum of special education services, so that all the handicapped children of the state receive a free, appropriate public education.

The policy option statements developed throughout this paper have focused on the specific issues inherent in the provision of appropriate special education and related services to adjudicated handicapped youth. The following policy options are presented to help aid decision makers in formulating appropriate public policy so that special education and related services can be provided to adjudicated handicapped youth.

Policy Option #1:

The Juvenile Court will notify the local education agency (LEA)

when a youth, suspected or known to have a handicapping condition, is scheduled to appear before said court for either a status or criminal offense, that necessitates an adjudication hearing.

Policy Option #2:

The local education agency (LEA), upon notification by the Juvenile Court of an impending hearing on a handicapped youth in its jurisdiction, and with the permission of the parent or guardian will present to the court for inclusion in the court record, any pertinent diagnostic, medical, psychological or educational information that could be helpful in securing proper treatment and placement for the handicapped youth.

Policy Option #3:

The state education agency (SEA) upon determination that a known handicapped youth, adjudicated by a Juvenile Court, is in need of a surrogate to act in his/her special education interests, will inform the appropriate correctional agency, facility or institution that a surrogate has been appointed.

Policy Option #4:

The state education agency (SEA) together with the state youth correctional facility or institution will ensure that an individualized education program (IEP) for each handicapped youth incarcerated in a state correctional facility, be developed that will reflect the individual needs of the handicapped youth.

Policy Option #5:

The state youth corrections agency will ensure that the special education programs and related services needed by the incarcerated handicapped

youth be provided in the least restrictive environment appropriate.

Policy Option #6:

The state education agency (SEA) will develop and implement effective teacher training programs, and inservice education programs for both regular and special education teachers and administrators who work with adjudicated handicapped youth in correctional facilities.

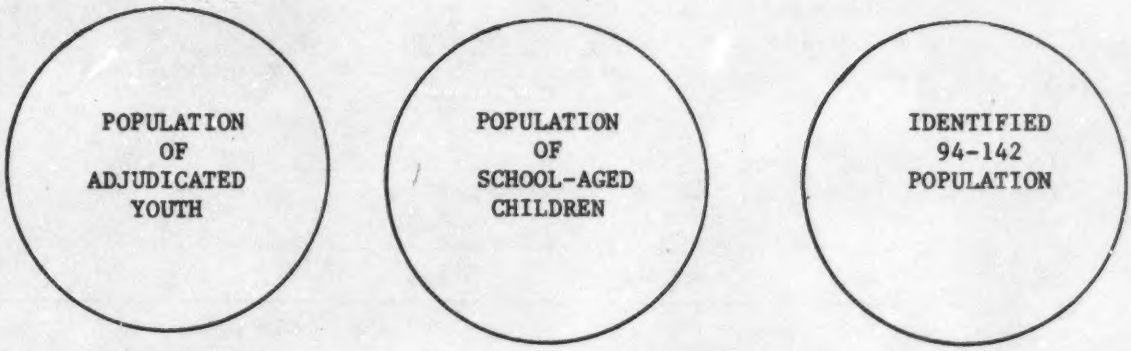
Policy Option #7:

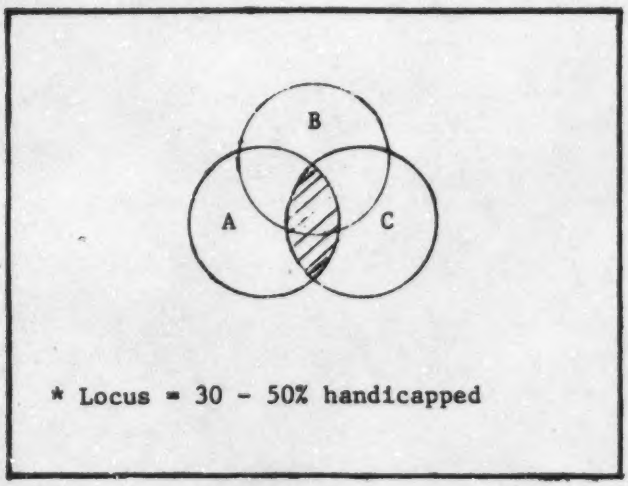
Local and state government leaders will work with parents, educators, and advocates for exceptional children, to ensure that appropriate legislation is passed that will provide for the delivery of special education and related services to handicapped young adults, especially adjudicated handicapped youth, aged 18 through 21 years old.

Policy Option #8:

Local and state government leaders, together with Juvenile Court Justices and the SEA, will formulate uniform policies and procedures relative to age criteria and definitional language defining juvenile status and delinquent acts, to ensure that all minor children, especially handicapped children, who commit criminal or status offenses are judged in a fair and equitable manner.

APPENDIX A





* The Locus of the Closed System Venn Diagram represents the suspected incidence of handicapped youth in Corrections Institutions.

(General Accounting Office (GAO) 1977; ACLD, 1979)

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